

February 3, 1999



OFFICE OF THE
ATTORNEY GENERAL
STATE OF TEXAS

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Ms. Johnette Hicks
Executive Director
Economic Opportunities Advancement
Corporation of Planning Region XI
500 Franklin Avenue
Waco, Texas 76701-2111

OR99-0317

Dear Ms. Hicks

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 121525.

The Economic Opportunities Advancement Corporation of Planning Region XI (the "EOAC") received a request "for a list of the students (by name only) currently enrolled at the EOAC Waco Charter School and the grade assignment for each of the students." You assert that a portion of the requested information is protected from disclosure under federal law and under sections 552.026, 552.101, 552.114 of the Government Code. We have considered the exceptions and arguments you have raised.

We note that in Open Records Decision No. 634 (1995), this office concluded that (1) an educational agency or institution may withhold from public disclosure student records that are protected by the Family Educational Rights and Privacy Act ("FERPA"), title 20 of the United States Code, section 1232g and excepted from required public disclosure by sections 552.026 and 552.101 without the necessity of requesting an attorney general decision as to those exceptions, and (2) an educational agency or institution that is state-funded may withhold from public disclosure information that is excepted from required public disclosure by section 552.114 as a "student record," insofar as the "student record" is protected by FERPA, without

the necessity of requesting an attorney general decision as to that exception.¹ However, as you seek a decision from this office, we will address your arguments against disclosure of the records.

You state that “EOAC wishes to withhold the grade assignment of each of the students and considers this information to be subject to Section 552.026 . . . and FERPA.” FERPA provides that no federal funds will be made available under any applicable program to an educational agency or institution that releases identifying information in a minor student’s records without parental consent. 20 U.S.C. § 1232g(b)(1). However, “directory information” is not subject to the FERPA confidentiality provisions. *Id.* § 1232g(b)(1). Directory information is subject to release after compliance with notice requirements that provide parents the right to object to the release of directory information. *Id.* § 1232g(a)(5)(B).

Section 99.3 of title 34 of the Code of Federal Regulations defines directory information as the type of information contained in an education record of a student that would not be considered harmful or an invasion of privacy if disclosed. 34 C.F.R. § 99.3. Directory information *includes but is not limited to* student name, address, telephone listing, date and place of birth, major field of study, participation in official recognized activities and sport, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and most recent previous educational agency or institution attended. *Id.* Although FERPA provides that directory information must include, at a minimum, student names, addresses, degrees awarded, and the other information listed in section 1232g(a)(5)(A), an educational agency or institution could also opt to make public other types of information not included in this list. Since the requestor here seeks only student’s names and their corresponding grade level, we conclude that the grade information cannot be considered harmful or an invasion of privacy if released, in light of the other items considered to be directory information. Therefore, as the grade level information can reasonably fall within a definition of directory information, once EOAC has followed the notice provisions of 20 U.S.C. 1232g(a)(5)(B), the requested information must be provided to the public. 20 U.S.C. § 1232g(a)(5)(A) (defining “directory

¹Section 552.114 requires that “information in a student record at an educational institution funded wholly or partly by state revenue” is excepted from disclosure, but must be made available on the request of the student or other authorized person. Section 552.026 provides as follows:

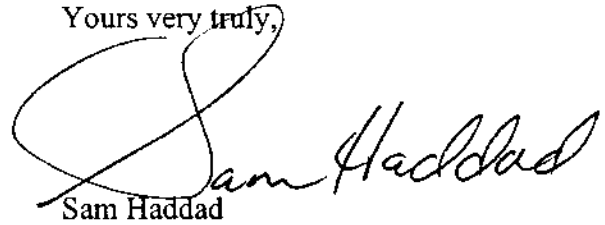
This chapter does not require the release of information contained in education records of an educational agency or institution, except in conformity with the Family Educational Rights and Privacy Act of 1974.

The term “student record” in section 552.114 has been generally construed to be the equivalent of “education records.” See generally Attorney General Opinion H-447 (1974); Open Records Decision Nos. 539 (1990); 477 (1987); 332 (1982).

information"); 34 CFR § 99.3 (defining directory information); Open Records Decision No. 242 (1980).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Sam Haddad". The signature is fluid and cursive, with a large initial "S" that loops around the first part of the name.

Sam Haddad
Assistant Attorney General
Open Records Division

SH/nc

Ref.: ID# 121525

cc: Ms. Rosanne Stripling
Superintendent
Waco Independent School District
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